

No. 4443

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United States

1428

Circuit Court of Appeals

For the Ninth Circuit.

In the Matter of DAVID A. JACOBSON, Bankrupt.

KATIE WERNER,

Petitioner,

vs.

HOMER F. ALLEN, as Trustee of the Estate of DAVID A. JACOBSON, Bankrupt, PHOENIX SAVINGS BANK & TRUST COMPANY, a Corporation, and NORTHERN TRUST COMPANY, a Corporation,
Respondents.

Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, an Order of the United States District Court for the District of Arizona, and Transcript of Record in Support Thereof.

FILED

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F. D. WOODRUFF

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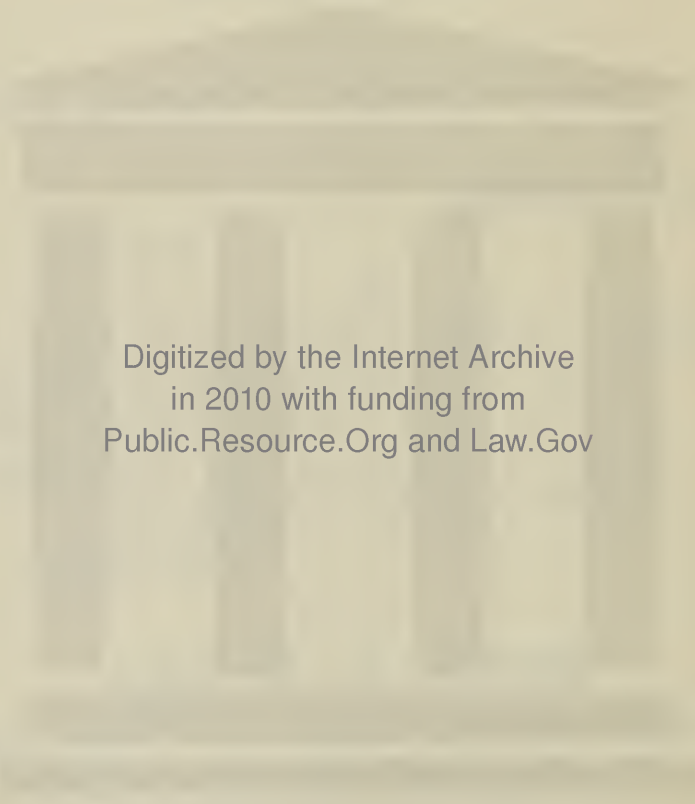
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States Circuit Court of Appeals for
the Ninth Circuit.

IN BANKRUPTCY—No. —.

In the Matter of DAVID A. JACOBSON, Bank-
rupt.

KATIE WERNER, Petitioner, vs. HOMER F.
ALLEN, as Trustee of the Estate of DAVID
A. JACOBSON, Bankrupt, PHOENIX
SAVINGS BANK & TRUST COMPANY,
a Corporation, and NORTHERN TRUST
COMPANY, a Corporation, Respondents.

In re Petition of KATIE WERNER to Superin-
tend and Revise.

PETITION.

The Honorable Judges of the United States Circuit
Court of Appeals for the Ninth Circuit:

The petition of Katie Werner respectfully shows
unto the Court: That on the 25th day of July, 1923,
David A. Jacobson filed his voluntary petition in
bankruptcy in the District Court of the United
States for the Federal District of Arizona, Phoenix
Division, said cause being No. B-282, and on the
31st day of July, 1923, he was duly adjudged to be
bankrupt by the said United States District Court
and on the same date said cause was referred gen-
erally to R. W. Smith, a referee in bankruptcy in
said district; that Homer F. Allen is the trustee of
said bankrupt's estate.

That your petitioner is a creditor of said David A. Jacobson, bankrupt, the indebtedness to her consisting of two promissory notes for \$2,000.00 each, with interest, said notes being secured by second [1*] mortgages upon lot 25 and upon lots 26, 27 and 28, respectively, all of the town of Chandler, Maricopa County, State of Arizona, in said federal district.

That Phoenix Savings Bank & Trust Company, a corporation, is a creditor of said bankrupt, the indebtedness to it consisting of a promissory note for \$10,000.00, with interest and accruals, said note being secured by first mortgage upon lot 25 aforesaid.

That Northern Trust Company, a corporation, is a creditor of said bankrupt, the indebtedness to it consisting of a promissory note for \$10,000.00, with interest and accruals, said note being secured by first mortgage upon lots 26, 27 and 28 aforesaid.

That during the course of the administration of said bankrupt's estate and on, to wit, the 20th day of November, 1923, bankrupt's trustee, Homer F. Allen, petitioned said referee for an order to show cause upon your petitioner why an order should not be made and entered authorizing him to sell lots 25, 26, 27 and 28, Town of Chandler, Maricopa County, Arizona, being real property of the bankrupt, free and clear of liens and encumbrances, said liens and encumbrances to be transferred to the proceeds of the sale thereof conditioned upon the

*Page-number appearing at foot of page of original certified Petition for Revision.

purchase price at trustee's sale of said lots 25, 26, 27 and 28 being sufficient to pay all liens and encumbrances.

That on, to wit, the 21st day of November, 1923, said referee made and entered an order directing this petitioner to appear before him on the 3d day of December, 1923, at 10:00 A. M. to show cause why the trustee should not be authorized to sell the afore-described property free and clear of all liens and [2] encumbrances, conditioned upon the purchase price at trustee's sale being sufficient to pay all of the liens and encumbrances against said realty.

That on, to wit, the 3d day of December, 1923, your petitioner appeared before said referee as ordered to do and made no objection to an order for the sale of said real estate free and clear of liens and encumbrances, and conditioned upon the purchase price being sufficient to pay all liens and encumbrances, and hearing on the petition for sale and order to show cause aforesaid was had and completed on said date before said referee.

That on the 18th day of December, 1923, without further notice to your petitioner, said referee signed and filed in this cause his order dated December 3, 1923, authorizing and directing the trustee to sell said real estate at public auction and in the manner and mode as prescribed by the Acts of Congress relating to bankruptcy and the General Orders of the Supreme Court of the United States, within ninety days from and after the 10th day of November, 1923, free and clear of all liens and en-

cumbrances; but wholly failed to direct that said sale be conditioned upon the purchase price being sufficient to pay all liens and encumbrances.

That thereafter the trustee published notice that he would sell at trustee's sale on Thursday, February 7, 1924, to the highest bidder for cash the herein described real estate, in his office, rooms 411-412 National Bank of Arizona Building, Phoenix, Arizona, requiring ten per cent of the amount to accompany each [3] bid, sale to be subject to confirmation by the Bankruptcy Court and reserving to himself the right to reject any and all bids. No notice of such proposed sale was given to the creditors of bankrupt as is required by law.

That on the 7th day of February, 1924, no sale at all was had or held by said trustee at his office but one Arthur E. Price, as attorney for Phoenix Savings Bank & Trust Company and Northern Trust Company, aforesaid, appeared there desiring to bid before the referee at the latter's office, all of which occurred prior to 10:00 o'clock in the morning on said date; that still prior to 10:00 o'clock in the morning of said date said trustee and said prospective bidder repaired to the office of the referee, R. W. Smith, at room 208 Heard Building, Phoenix, Arizona, where, at the hour of 10:00 o'clock A. M., said 7th day of February, 1924, said attorney made a bid of \$15,527.64 for lot 25 and a bid of \$15,547.70 for lots 26, 27 and 28 on behalf of said corporations, respectively, which bids were at said hour and place accepted by the trustee.

That on, to wit, the 3d day of March, 1923, said trustee made and filed his return of the herein described sale, and on the same date, then and there, without notice to your petitioner, said referee, by his order, confirmed the sale and ordered the trustee to pay to Phoenix Savings Bank & Trust Company \$14,103.97, the amount of its first mortgage upon lot 25, with accruals, and to pay as expenses of sale, including \$776.28, as trustee's attorney's fees, \$1189.85, being [4] a total of \$15,293.82, payable out of the proceeds of sale of lot 25 aforesaid; and to pay to Northern Trust Company \$14,322.50, the amount of its first mortgage upon lots 26, 27 and 28, and to pay as expenses of sale, including \$777.39 as trustee's attorney's fees, \$1193.15, being a total of \$15,515.65, payable out of proceeds of sale of lots 26, 27 and 28 aforesaid. That the purchase price obtained by said sale of lots 25, 26, 27 and 28 was wholly insufficient to pay all of the liens and encumbrances thereupon and insufficient to pay in whole or in part the second mortgages of your petitioner.

That thereafter, and on the 13th day of October, 1924, your petitioner, Katie Werner, petitioned said referee for his order setting aside and holding for naught the hereinbefore mentioned order of sale, the sale, and the order confirming sale and in said petition requested said referee for his order upon said trustee, Phoenix Savings Bank & Trust Company and Northern Trust Company, to show cause why said petition should not be granted,

which petition was duly served upon said respondents and no answer was made thereto.

That on the 8th day of November, 1924, said referee, without issuing the requested order to show cause and without hearing said petition or taking evidence thereon, dismissed same for want of jurisdiction, although, as a matter of law, he had jurisdiction, to which order of dismissal your petitioner then duly excepted.

Your petitioner further avers that on the 17th day of November, 1924, she filed in the District Court [5] of the United States for the Federal District of Arizona her petition for the review of the acts, conduct and order of said referee dated the 8th day of November, 1924, representing that the referee had erred in this, to wit, he failed to issue his order to show cause upon said petition; he arbitrarily acted upon said petition without full and complete hearing and receiving evidence thereon and he dismissed the petition, whereas he should have issued an order to show cause upon said petition and have received and preserved all evidence and testimony in connection therewith. That said petition for review was on said 17th day of November, 1924, duly served upon said trustee, Phoenix Savings Bank & Trust Company and Northern Trust Company but none of them made written answer thereto or tendered issue thereon.

Thereafter the referee duly certified his record in this cause to the District Court of the United States at Phoenix, Arizona, whereupon said petition for review duly coming on for argument on the

8th day of December, 1924, the said District Court of the United States, the Honorable F. C. Jacobs, Judge, thereafter, on the 9th day of December, 1924, made and entered his order denying said petition for review and confirming the referee's orders theretofore made; to which ruling of the Court your petitioner then and there duly excepted.

Your petitioner tenders herewith and files in support of and as part of this petition a true copy of the necessary record in this cause as it appears in [6] the office of the Clerk of the District Court of the United States for the Federal District of Arizona, at Phoenix, Arizona, duly certified to by said Clerk under his hand and seal of office, consisting of

- (1) Order adjudication and reference.
- (2) Petition for order of sale.
- (3) Order to show cause.
- (4) Order of sale.
- (5) Return of sale.
- (6) Order confirming sale.
- (7) Petition of Katie Werner for order setting aside sale, etc.
- (8) Proof of service of petition to set aside sale.
- (9) Referee's order dismissing petition of Katie Werner to set aside sale.
- (10) Exceptions to order of referee denying and dismissing petition to set aside order of sale.
- (11) Petition for review.
- (12) Proof of service of petition for review.
- (13) Order denying petition for review.

(14) Exceptions by Katie Werner to order denying petition for review.

(15) Notice of petition to superintend and revise.

Your petitioner avers that said order and decree of the said United States District Court for the Federal District of Arizona made and entered on the 9th day of December, 1924, was and is erroneous in matters of law, in that

(a) The facts shown by the petition to set aside order of sale, sale and order confirming same filed [7] with the Referee by your petitioner on October 13, 1924 (which must be taken as true in the absence of any denial thereof), would necessitate the setting aside of the sale and, therefore, constituted a valid cause of action on the part of your petitioner. The only action that the Referee could have lawfully taken would have been to cite the trustee and purchaser to show cause why the petition should not have been granted and if then said respondents raised any issue of fact, to have received all of the evidence, preserved same and made his findings and orders on the merits thereof. The order of the District Court denying the petition for review upheld the procedure of the Referee in summarily dismissing the petition, when the Referee should have been directed to issue the order to show cause requested and to receive all evidence and preserve the same and in all respects give the petitioner her day in court by full and complete hearing on her said petition.

(b) The District Court, in confirming the orders of the Referee, held the order of sale by the Referee

valid, whereas, as a matter of law, the Referee had no jurisdiction to make the order. His jurisdiction was based upon an order for your petitioner to show cause why an order of sale of the real property for a price sufficient to pay the amount of her lien in full should not be made, to which order she had no objection but, contrary thereto, the Referee made an order for the sale of the real property herein described free and clear of liens but without ordering that the purchase price be sufficient to pay her lien in full. The only jurisdiction [8] had by the Referee was to make an order for sale based on the trustee's petition and the order to show cause issued thereon, and none other. No notice of any proposed sale was given to creditors as provided by the Bankruptcy Act. The notice of the trustee's petition for sale given was not compliance therewith.

(c) The sale by the trustee was void as a matter of law, in that the order of the Referee provided that the sale should be at public auction in the manner and mode as prescribed by the Acts of Congress relating to bankruptcy and the General Orders of the Supreme Court of the United States, whereas the sale was in fact a private sale and held at a place other than specified by said trustee, without due and lawful postponement or adjournment thereof. Under General Order No. 18 of the Supreme Court of the United States, and the order of sale made by the Referee, this sale was, as a matter of law, invalid and the District Court had no power to confirm same.

(d) By the order and decree of said United States District Court, your petitioner was in fact deprived of due process of law in violation of the Fifth Amendment to the Constitution of the United States.

The District Court erred in denying the petition for review of Katie Werner.

The District Court erred in entering his order confirming the action of the Referee in confirming the sale.

That your petitioner on the 11th day of December, 1924, caused to be served upon the trustee, Homer F. Allen, [9] a notice that this petition to superintend and revise would be filed in due course by delivering a true copy thereof to his attorney of record, A. Henderson Stockton, and has also caused said notice to be served upon Phoenix Savings Bank & Trust Company and Northern Trust Company, corporations, by the mailing of true copies thereof to the attorney of record for said corporations, Arthur E. Price, at Chandler, Arizona, by registered mail.

WHEREFORE, your petitioner feeling aggrieved because of said order and decree of the District Court of the United States for the Federal District of Arizona, prays that the same may be revised in matter of law by your Honorable Court, as provided in paragraph 24-b of the Bankruptcy

Law of 1898 and the rules and practice in such case made and provided.

KATIE WERNER.

F. W. ZIMMERMAN,

D. V. MULHERN,

Counsel for Petitioner.

United States of America,
Federal District of Arizona,—ss.

Katie Werner, the petitioner mentioned and described in the foregoing petition, does hereby make solemn oath that the statements of fact therein contained are true of her own knowledge, save and except the statements therein made on information and belief and as to them, they are true to the best of her knowledge, [10] information and belief.

KATIE WERNER.

Subscribed and sworn to before me this 16th day of December, 1924.

[Seal]

L. J. BROOKS,

Notary Public, in and for the County of Maricopa,
State of Arizona, in said Federal District.

My commission expires Aug. 2d, 1925. [11]

In the District Court of the United States, for the
District of Arizona.

No. B-282 (PHOENIX).

In the Matter of DAVID A. JACOBSON, Bank-
rupt.

ORDER OF ADJUDICATION AND REFERENCE.

At Phoenix, in said District, on the 31st day of July, 1923, before the Honorable Fred C. Jacobs, Judge of the said court in bankruptcy, the petition of David A. Jacobson that he be adjudged a bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been duly heard and considered, the said David A. Jacobson is hereby adjudged a bankrupt accordingly.

And it is therefore ORDERED that the said matter be referred to R. W. Smith, Esq., one of the Referees in Bankruptcy of this court, Heard Building, Phoenix, Arizona, to take such further proceedings therein as are required by said act, and that the said David A. Jacobson shall attend before said referee on the 15th day of August, 1923, at Phoenix, Arizona, in said District and shall thenceforth submit to such orders as may be made by said Referee or by this court relating to bankruptcy.

WITNESS the Honorable FRED C. JACOBS, Judge of the said court and the seal thereof at Phoenix, in said District on the 31st day of July, 1923.

[Seal]

C. R. McFALL,
Clerk.

By Paul Dickason,
Chief Deputy Clerk.

(Endorsed on back:) No. B-282. United States District Court, [12] District of Arizona. In Bankruptcy. In the Matter of David A. Jacobson, Bankrupt. Order of Adjudication and Reference. Zimmerman & Mulhern, Attorneys for Bankrupt. United States of America, District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect and complete copy of Order of Adjudication and Reference, in the Matter of David A. Jacobson, Bankrupt, as the same appears from the original records of the same remaining in my office.

WITNESS my hand and the seal of said Court affixed this 17th day of December, 1924.

[Seal]

C. R. McFALL,
Clerk.

By Chas. H. Adams,
Deputy Clerk. [13]

In the District Court of the United States for the
Federal District of Arizona.

IN BANKRUPTCY—No. B-279 (PHOENIX).
In the Matter of DAVID A. JACOBSON, Bank-
rupt.

PETITION FOR ORDER TO SHOW CAUSE
WHY REAL PROPERTY SHOULD NOT
BE SOLD FREE AND CLEAR OF LIENS,
AND PETITION FOR SALE OF REAL
PROPERTY FREE AND CLEAR OF
LIENS.

The petition of Homer F. Allen respectfully represents and shows:

(1) That your petition was heretofore and on the 20th day of Sept. 1923, duly elected and approved trustee in bankruptcy of all of the property of the above-named bankrupt, and your petitioner did qualify as such trustee by filing his bond in the amount fixed by the Referee in Bankruptcy, which said bond has been approved, and said trustee is now, and since the approval of said bond has been, the duly elected, approved, qualified and acting trustee in bankruptcy of David A. Jacobson, Bankrupt.

(2) That title was vested in David A. Jacobson on the date of bankruptcy herein to the following described property situate in the County of Maricopa, State of Arizona, to wit:

Lots 25, 26, 27, 28, 36, 37, 38 and 39, Town of Chandler, Maricopa County, Arizona, according to the map or plat thereof on file and of record in the office of the County Recorder of Maricopa County, Arizona;

East half of the southwest quarter of Section 10, Township 2 South, Range 5 East of the Gila and

Salt River [14] Base and Meridian, in Maricopa County, Arizona, containing eighty (80) acres, more or less.

(3) That on March 4, 1920, David A. Jacobson executed and delivered to the Phoenix Savings Bank and Trust Company, a corporation, his certain real property mortgage upon Lots 38 and 39 of the Town of Chandler, Maricopa County, Arizona, which said mortgage was recorded March 6, 1920, in Book 125 of Mortgages at page 257, as security for the payment of \$10,000.00, and thereafter the Phoenix Savings Bank and Trust Company, a corporation, on the 18th day of June, 1923, filed in the Superior Court of the State of Arizona, in and for the County of Maricopa, an action against David A. Jacobson and others to foreclose said mortgage, which action was numbered 17860-C among the files and records of the clerk of said court.

That on May 8, 1922, David A. Jacobson, bankrupt, executed and delivered to the Bank of Chandler, a corporation of Arizona, his real property mortgage upon Lots 38 and 39 of the Town of Chandler, Maricopa County, Arizona, which said mortgage was recorded on June 17, 1922, in Book 148 of Mortgages at page 434, as security for the payment of the sum of \$16,955.00.

That thereafter David A. Jacobson assigned by an instrument in writing to one Harry J. Collis as security for an indebtedness of \$3,000.00, a certain indenture of lease made and entered into January 25, 1922, between David A. Jacobson, first

party, and Chamber of Commerce, of Chandler, Arizona, second party, in which said lease the Chamber of Commerce agreed to pay to David A. Jacobson a monthly rental of \$35.00 for two years, commencing on February 1, 1922, and ending January 31, 1924, and another certain indenture of lease made and entered into on November 5, 1920, between David A. Jacobson, first party, and J. N. Armstrong and J. F. Sparks, second parties, in which said lease J. N. Armstrong and J. F. Sparks agreed to pay to David A. Jacobson a rental of \$6,000.00, payable \$100.00 per month beginning [15] November 15, 1920, and concluding November 14, 1925.

That said Lots 38 and 39 of the Town of Chandler, Maricopa County, Arizona, are also subject to unpaid taxes and street improvement bonds.

(4) That on December 30, 1919, David A. Jacobson executed and delivered to the Phoenix Savings Bank and Trust Company, a corporation, his certain real property mortgage upon Lot 25 of the Town of Chandler, Maricopa County, Arizona, which said mortgage was recorded March 6, 1920, in Book 123 of Mortgages at page 287, as security for the payment of \$10,000.00, and thereafter the Phoenix Savings Bank and Trust Company, a corporation, on the 18th day of June, 1923, filed in the Superior Court of the State of Arizona, in and for the County of Maricopa, an action against David A. Jacobson and others to foreclose said mortgage, which action is numbered 17861-C among the files and records of the clerk of said court.

That on February 27, 1923, David A. Jacobson, Bankrupt, executed and delivered to the Bank of Chandler, a corporation of Arizona, his real property mortgage upon Lot 25 of the Town of Chandler, Maricopa County, Arizona, which said mortgage was recorded March 1, 1923, in Book 148 of Mortgages at page 434 as security for the payment of the sum of \$16,955.00; said mortgage recites that it is subject to the first mortgage of the Phoenix Savings Bank and Trust Company, hereinbefore referred to, and also subject to a second mortgage on the same lot, executed by David A. Jacobson, Bankrupt, to one Katie Werner, as security for the sum of \$2,000.00.

Petitioner is informed and believes that bankrupt was indebted to Katie Werner in the sum of \$2,000.00, and that said indebtedness is secured by a second mortgage upon said Lot 25 of the Town of Chandler.

(5) That on January 7, 1920, David A. Jacobson executed and delivered to Dwight B. Heard Investment Company of Arizona, [16] his certain real property mortgage upon Lots 26, 27 and 28 of the Town of Chandler, Maricopa County, Arizona, which said mortgage was recorded January 9, 1920, in Book 123 of Mortgages, pages 355 and 356, as security for the payment of 10,000.00, and thereafter by an instrument in writing said Dwight B. Heard Investment Company, a corporation of Arizona, assigned said mortgage to the Northern Trust Company, a corporation. Said assignment was dated February 20, 1920, and was

recorded January 31, 1921, in Book — of Assignments, page —. That on August 3, 1923, the Northern Trust Company, a corporation, filed in the Superior Court of the State of Arizona, in and for the County of Maricopa, an action against David A. Jacobson and others to foreclose said mortgage, which action is numbered 18033-C among the files and records of the clerk of said court.

That on December 28, 1921, David A. Jacobson leased to the United States of America that certain room 18 feet 6 inches by 70 feet, inside measurement, on the first floor of the one story brick premises known as the Post Office Building, situate on the south side of Boston Street between Arizona Avenue and Oregon Street, on Lot 27 of Chandler, Maricopa County, Arizona, for the term of five years next ensuing after July 1, 1921, for the quarterly rental of \$1.00 per quarter, payable on the 1st day of January, April, July and October of each year.

That on June 16, 1921, David A. Jacobson, Bankrupt, executed and delivered to Katie Werner, a widow, his real property mortgage upon Lots 26, 27 and 28 of the Town of Chandler, Arizona, as security for the payment of the sum of \$2,000.00; said mortgage was recorded June 16, 1921, Book 139 of Mortgages, page 299.

That on May 8, 1922, David A. Jacobson, Bankrupt, executed and delivered to the Bank of Chandler, a corporation, his real property mortgage upon Lots 26, 27 and 28 of the town of Chandler, Maricopa County, Arizona, as security for the payment

of the sum of \$16,955.00. Said mortgage was recorded June 17, 1922, in [17] Book 148 of Mortgages at page 434.

That said Lots 26, 27 and 28 of the Town of Chandler, Maricopa County, Arizona, are also subject to unpaid taxes and street improvement bonds.

(6) That on April 17, 1920, David A. Jacobson executed and delivered to Dwight B. Heard Investment Company, a corporation, his certain real property mortgage upon Lots 36 and 37 of the Town of Chandler, Maricopa County, Arizona, which said mortgage was recorded April 28, 1920, in Book 130 of Mortgages, pages 66-68, as security for the payment of \$7,500.00, and thereafter by an instrument in writing said Dwight B. Heard Investment Company, a corporation, assigned said mortgage to the Northern Trust Company, a corporation. Said assignment was dated June 22, 1920, and was recorded October 18, 1920, in Book — of Assignments at page —. That on August 3, 1923, the Northern Trust Company, a corporation, filed in the Superior Court of the State of Arizona, in and for the County of Maricopa, an action against David A. Jacobson and others to foreclose said mortgage, which action is numbered 18032-C among the files and records of the clerk of said court.

That on October 25, 1921, David A. Jacobson executed and delivered to H. L. Hancock his real property mortgage upon Lots 36 and 37 of the Town of Chandler, Maricopa County, Arizona, as security for the payment of the sum of \$2,500.00; said mortgage was recorded October 25, 1921, in Book 137 of Mortgages at page 112.

That on May 8, 1922, David A. Jacobson executed and delivered to the Bank of Chandler, a corporation, his real property mortgage upon Lots 36 and 37 of the Town of Chandler, Maricopa County, Arizona, as security for the payment of the sum of \$16,955.00. Said mortgage was recorded June 17, 1922, in Book 148 of Mortgages at page 434. [18]

That thereafter David A. Jacobson by an instrument in writing assigned to Ray Jacobson, a spinster, as security for \$6,000.00, a lease entered into February 1, 1922, between David A. Jacobson as first party and one J. B. Weber as second party, wherein said Weber agreed to pay to David A. Jacobson rental of \$3,060.00 at the rate of \$85.00 per month on the 1st day of May, 1922, and concluding with April 1, 1925, and another lease dated November 1, 1919, between David A. Jacobson as first party and W. Menhennett as second party, in which said Menhennett agreed to pay said Jacobson as rental \$12,000.00 in monthly installments.

(7) That on or about the 24th of October, 1917, David A. Jacobson executed and delivered to the Chandler Improvement Company his real property mortgage upon the following described premises situate in Maricopa County, Arizona, to wit:

The Southeast Quarter of the Southeast Quarter and the South Half of the Northeast Quarter of the Southeast Quarter, excepting 33 feet on the South and East lines for road purposes, of Section Ten, Township Two South, Range Five East, Gila and Salt River Base and meridian, Maricopa County, Arizona,

as security for the payment of two promissory notes of the same date, upon which there is now a balance due of \$6825.00 principal, and interest in the sum of \$1261.58. Said mortgage was recorded on the — day of —, 19—, in Book 108 of Mortgages at page 338 thereof.

That on or about February 28, 1918, Alex A. DeWitt and Jessie DeWitt executed and delivered to the Chandler Improvement Company their real property mortgage upon the following described premises situate in Maricopa County, Arizona, to wit:

The North Half of the Northeast Quarter of the Southeast Quarter, excepting 33 feet on the North and East lines for road purposes, of Section Ten, Township Two South, Range Five East, Gila and Salt River Base and Meridian, Maricopa County, Arizona, [19]

as security for the payment of two promissory notes, upon which there is now due the principal sum of \$2275.00, and interest in the sum of \$438.38, said mortgage being recorded in Book 109 of Mortgages at page 584 thereof.

That on or about November 4th, 1918, Alex A. DeWitt and Jessie DeWitt transferred title of the last described property to David A. Jacobson, bankrupt herein.

That on or about the 26th day of May, 1921, David A. Jacobson executed a second mortgage upon the real property described as

The East Half of the Southeast Quarter of Section Ten, Township Two South, Range Five

East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, containing 80 acres, more or less,

and delivered the same to Reuben Jacobson as security for the principal sum of \$2,000.00, which said mortgage was recorded on the 26th day of May, 1921, in Book 140 of Mortgages, at pages 241-2.

That on May 8th, 1922, David A. Jacobson executed and delivered to the Bank of Chandler, a corporation, his real property mortgage upon

The East Half of the Southeast Quarter of Section Ten, Township Two South, Range Five East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, containing 80 acres, more or less,

which said mortgage was recorded June 17, 1922, in Book 148 of Mortgages at page 434 thereof, as security for the payment of the sum of \$16,955.

(8) That the J. D. Halstead Lumber Company, a corporation, did heretofore, and on or about the 22d day of June, 1923, obtain a judgment in the Superior Court of the State of Arizona, in and for the County of Maricopa, in the sum of \$1974.35, \$200 attorney fees and \$10.10 costs, all with [20] interest, which judgment remains unsatisfied and constitutes a lien against all of the real property in this petition described and referred to, and other real property. That said Trustee is informed and believes that the lien of the said J. D. Halstead Lumber Company was obtained within four months of the bankruptcy of David A. Jacobson, and is void

or voidable as a preference under the Bankruptcy Act.

(9) That one Reuben Jacobson, through his attorneys, Zimmerman & Mulhern, has in writing made a bid for the purchase of the East Half of the Southeast Quarter of Section Ten, Township Two South, Range Five East, of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona, containing 80 acres, more or less, and has agreed to pay therefor the sum of \$15,500, but that said bid has not as yet been signed by Reuben Jacobson, and no deposit on account thereof in cash has been made, but said Trustee has caused a bid in the usual form required by him to be prepared and submitted to said Zimmerman & Mulhern for execution, which will require a deposit of ten per cent of the amount of the bid. Your petitioner believes said bid will be properly executed and the required deposit made within ten days from date hereof.

(10) That your Trustee believes the value of the East Half of the Southeast Quarter of Section Ten, Township Two South, Range Five East, of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona, containing 80 acres, more or less, to be of the value of not less than \$15,500, which said sum is in excess, as your Trustee is informed and believes, of the first and second mortgages against said property. That your Trustee cannot ascertain the amount of further encumbrances against said property for the reason that all further encumbrances on said property are likewise encum-

brances upon [21] other properties herein described and property not herein described.

(11) That a stipulation has been in writing entered into between: The Phoenix Savings Bank & Trust Company, a Corporation; The Northern Trust Company, a Corporation; Katie Werner and Homer F. Allen, Trustee in Bankruptcy of David A. Jacobson, which said stipulation is on file herein, and by the terms thereof, the parties thereto have stipulated and agreed that Lots 25, 26, 27, 28, 36, 37, 38 and 39 of the Town of Chandler, Maricopa County, Arizona, may be sold by the Trustee in Bankruptcy, free and clear of the encumbrances of such parties, their lien to be transferred to the proceeds upon the sale. Said stipulation further provides the time within which such sale shall be made, and fixes the expense in connection therewith. Reference is made to said stipulation on file for all of its terms and conditions. Said stipulation has at a meeting of the creditors been approved by the Referee in Bankruptcy herein.

(12) Said Trustee is informed, and upon such information alleges that there is a clear equity in said real property in this petition described, over and above all the encumbrances against said property, and that it is for the best interests of said bankrupt estate and the creditors thereof, secured and unsecured, and all of the persons claiming liens upon said property, that the said property be sold by the Trustee in Bankruptcy, free and clear of all encumbrances, and that all liens against the prop-

erty be transferred to the proceeds derived from the sale thereof.

(13) That there is pending herein a petition by The Chandler Improvement Company, a Corporation, for leave to foreclose its mortgages upon the East Half of the Southeast [22] Quarter of Section Ten, Township Two South, Range Five East, of the Gila and Salt River Base and Meridian in Maricopa County, Arizona.

WHEREFORE, said Trustee prays for an order to show cause upon:

The Phoenix Savings Bank and Trust Company, a Corporation;

The Northern Trust Company, a Corporation;
Katie Werner;

The Bank of Chandler, a Corporation;

The Chandler Improvement Company, a Corporation;

Reuben Jacobson;

The J. D. Halstead Lumber Company, a Corporation;

Ray Jacobson;

H. L. Hancock, and

Harry J. Collis,

why an order should not be entered authorizing and directing Homer F. Allen, Trustee in Bankruptcy of David A. Jacobson, to sell Lots 25, 26, 27, 28, 36, 37, 38 and 39, of the Town of Chandler, Maricopa County, Arizona, free and clear of all liens and encumbrances, the liens now existing upon said property to be transferred to the proceeds derived from the sale thereof in accordance with the stipu-

lation filed herein by certain of said lienors, and why an order should not be entered authorizing and directing Homer F. Allen, as Trustee in Bankruptcy of David A. Jacobson, to sell the East Half of the Southeast Quarter of Section Ten, Township Two South, Range Five East, Gila and Salt River Base and Meridian, in Maricopa County, Arizona, containing 80 acres, more or less, free and clear of liens and encumbrances, conditioned upon the purchase price at a Trustee's Sale of said property and of Lots 25, 26, 27, 28, 36, 37, 38 and 39, being sufficient to pay all of the liens against all of said property, and for an order directing all of the respondents herein to file their claims against David A. Jacobson in this bankruptcy proceeding with a statement of the security held by each within [23] thirty days from the date hereof, and for an order after notice to creditors for sale of the real property herein described free of encumbrance.

(Signed) HOMER F. ALLEN,
Petitioner.

(Signed) HENDERSON STOCKTON,
Attorney for Petitioner.

United States of America,
Federal District of Arizona,—ss.
State of Arizona,
County of Maricopa,—ss.

Homer F. Allen, being upon his oath first duly sworn, deposes and says: That he is the petitioner in the foregoing petition that he has read the same

and knows the contents thereof, and believes the statements therein made to be true.

(Signed) HOMER F. ALLEN.

Subscribed and sworn to before me this 20th day of November, A. D. 1923.

[Seal] (Signed) JAMES H. WARD,
Notary Public.

My commission expires 6/13/1927.

(Endorsed on back): In the District Court of the United States for the Federal District of Arizona. In Bankruptcy—No. B-279 (Phoenix). In the Matter of David A. Jacobson, Bankrupt. [24] Petition for Order to Show Cause Why Real Property Should not be Sold Free and Clear of Liens, and Petition for Sale of Real Property Free and Clear of Liens. Filed Nov. 21, 1923, at 9:30 A. M. (Signed) R. W. Smith, Referee. Henderson Stockton, Phoenix, Arizona. (Pencil) 17.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect and complete copy of petition for order to show cause why real property should not be sold free and clear of liens, and petition for sale of real property free and clear of liens as the same appears from the original records of the same remaining in my office.

Witness my hand and the seal of said court affixed this 17th day of December, 1924.

[Seal]

C. R. McFALL,

Clerk.

By Chas. H. Adams,

Deputy Clerk. [25]

In the District Court of the United States for the
Federal District of Arizona.

IN BANKRUPTCY—No. B-279 (PHOENIX).

In the Matter of DAVID A. JACOBSON, Bank-
rupt.

ORDER TO SHOW CAUSE.

Homer F. Allen, having filed herein his petition, duly verified for an order upon the Phoenix Savings Bank & Trust Company, a corporation; The Northern Trust Company, a corporation; Katie Werner; The Bank of Chandler, a corporation; The Chandler Improvement Company, a corporation; Reuben Jacobson; The J. D. Halstead Lumber Company, a corporation; Ray Jacobson; H. L. Hancock, and Harry J. Collis, why Lots 25, 26, 27, 28, 36, 37, 38 and 39 of the Town of Chandler, Maricopa County, Arizona, should not be sold free and clear of all liens and encumbrances, and why the East Half of the Southeast Quarter of Section 10, Township 2, South Range 5 East, G. & S. R. B. & M., in Maricopa County, Arizona, containing 80 acres more or less, should not be sold free and clear of liens and

encumbrances, conditioned upon the purchase price at trustee's sale of said property and the purchase price of Lots 25, 26, 27, 28, 36, 37, 38 and 39 aforesaid being sufficient to pay all of the liens against all of said property and for an order directing all of said persons to file their claims against David A. Jacobson, in bankruptcy, with a statement of the security held by each within thirty days from the date hereof, good cause appearing therefor, and on motion of Henderson [26] Stockton, counsel for said trustee,

IT IS ORDERED that the Phoenix Savings Bank & Trust Company, a corporation, The Northern Trust Company, a corporation, Katie Werner; The Bank of Chandler, a corporation, The Chandler Improvement Company, a corporation, Reuben Jacobson, The J. D. Halstead Lumber Company, a corporation, Ray Jacobson, H. L. Hancock and Harry J. Collis, be and appear before the undersigned referee in bankruptcy on the 3d day of December, 1923, at 10 A. M., then and there to show cause, if any they may have, why the prayer of the petition hereinbefore referred to should not be granted, and why an order should not be made and entered authorizing and directing Homer F. Allen, trustee in bankruptcy of David A. Jacobson, to sell Lots 25, 26, 27, 28, 36, 37, 38 and 39 of the Town of Chandler, Maricopa County, Arizona, free and clear of all liens and encumbrances, the liens now existing upon said property to be transferred to the proceeds derived from a sale thereof; and further why an order should not be made and entered au-

thorizing and directing said Homer F. Allen, as trustee in bankruptcy of David A. Jacobson, to sell the East Half of the Southeast Quarter of Section 10, Township 2 South, Range 5 East, G. & S. R. B. & M., in Maricopa County, Arizona, containing 80 acres, more or less, free and clear of liens and encumbrances, conditioned upon the purchase price at trustee's sale of said property and of Lots 25, 26, 27, 28, 36, 37, 38 and 39, being sufficient to pay all of the liens against all of said property; and further why an order should not be entered directing each of the parties aforesaid to file their claims in bankruptcy herein with the statement of the security held therefor on or before 30 days from and after the date hereof; and further why said sale of said property, free and clear of liens and encumbrances, should not be made on or before ninety days from and after the 10th day of November, 1923. [27]

IT IS FURTHER ORDERED that service of this order to show cause be made upon the respondents herein named by depositing a copy of this order, together with a copy of said petition in an envelope addressed to each respondent at his address as given in the schedules in bankruptcy, or to his last known address, in the United States mail at Phoenix, Arizona, duly registered, postage and registry fee prepaid, or by the delivery of a copy hereof, together with a copy of said petition to each of the parties named herein.

Dated, Phoenix, Arizona, November 21, 1923.

(Signed) R. W. SMITH,

Referee in Bankruptcy.

(Endorsed on back): In the District Court of the United States for the Federal District of Arizona. In Bankruptcy—No. B-279 (Phoenix). In the Matter of David A. Jacobson, Bankrupt. Order to Show Cause. (Ink) Rec'd copy for Katie Werner, Reuben Jacobson, Ray Jacobson, Harry J. Collis this 21st of November, 1923. (Stamp) Zimmerman & Mulhern. (Ink) By F. L. Z. (Ink) Filed Nov. 24, 1923, at 4 P. M. (Signed) R. W. Smith, Referee. [28] Henderson Stockton, Phoenix, Arizona. (Pencil) 19.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect and complete copy of affidavit of service and order to show cause as the same appears from the original records of the same remaining in my office.

Witness my hand and the seal of said court affixed this 17th day of December, 1924.

[Seal]

C. R. McFALL,

Clerk.

By Chas. H. Adams,

Deputy Clerk. [29]

In the District Court of the United States for the
Federal District of Arizona.

IN BANKRUPTCY—No. 282—PHOENIX.

In the Matter of DAVID A. JACOBSON, Bank-
rupt.

ORDER DIRECTING SALE OF REAL PROP-
ERTY FREE AND CLEAR OF LIENS.

The trustee herein, Homer F. Allen, having filed his verified petition for an order upon the Phoenix Savings Bank and Trust Company, a corporation, the Northern Trust Company, a corporation, Katie Werner, the Bank of Chandler, a corporation, the Chandler Improvement Company, a corporation, Reuben Jacobson, the J. D. Halstead Lumber Company, a corporation, Ray Jacobson, H. L. Hancock, and Harry J. Collis to show cause why real property belonging to said estate, described in said petition and hereinafter particularly described, should not be sold free and clear of all liens and encumbrances at public auction and in the manner prescribed by the Acts of Congress relating to bankruptcy and the general orders of the Supreme Court of the United States, and why the liens and encumbrances should not be transferred to the proceeds derived from such sale to all intents and purposes as though the said property had not been sold, and an order to show cause upon said parties having been issued and returnable before R. W. Smith, Esq., Referee in Bankruptcy, on the 3d day

of December, 1923, at ten A. M., as prayed in said petition and particularly as appears of record herein, and the trustee having also petitioned for an order, after notice to creditors as required by law, to sell real property in said petition and hereinafter specifically [30] described, free and clear of liens and encumbrances, all liens and encumbrances upon said property to be transferred to the proceeds derived from the sale thereof, to all intents and purposes as though the property had not been sold, and ten days' notice to creditors having been given, as required by law, of a hearing on said petition last referred to, and it appearing to the Court that the order to show cause aforesaid has been served upon all of the parties named therein as required by law and the order aforesaid, said order to show cause and the said petition for sale of said property as aforesaid came on regularly for hearing on the 3d day of December, 1923, at ten o'clock in the forenoon of said day, at which time there appeared the trustee in person and by his counsel, Henderson Stockton, Esq., the bankrupt by his counsel, Zimmerman and Mulhern, certain creditors as appears of record by their respective counsel, to wit, Messrs. Schupp and Hill, Arthur E. Price, Esq., and Henderson Stockton, Esq.; the Phoenix Savings Bank & Trust Company, a corporation, the Northern Trust Company, a corporation, the Bank of Chandler, a corporation, and the Chandler Improvement Company, a corporation, appeared in response to said order to show cause by their counsel, Arthur E. Price; Ray Jacobson,

Katie Werner, Reuben Jacobson and Harry J. Collis appeared in response to said order to show cause by their attorneys, Messrs. Zimmerman and Mulhern; and respondent J. D. Halstead Lumber Company, a corporation, failed to appear in person or by counsel; and the respondent H. L. Hancock appeared in person and by his counsel, Messrs. Kibbey, Bennett, Gust and Smith; and neither of said respondents except H. L. Hancock filed any written objections or response to the said order to show cause, or presented any opposition to the order as prayed by the trustee in the petition aforesaid except [31] said H. L. Hancock, and the said H. L. Hancock filed objections to a sale of only Lots 36 and 37 in Chandler Townsite, Maricopa County, Arizona.

Whereupon, said petition was heard and examined as it respects the real property described in said order to show cause and in said petition, and it appearing that various of the parties to said order to show cause had in person or by their counsel stipulated for the sale of the real property hereinafter described, free and clear of encumbrances, all liens and encumbrances to be transferred to the proceeds derived therefrom, conditioned that said sale be made on or before ninety days from and after the date of said stipulation, to wit, the 10th day of November, 1923, and it further appearing that the parties to said stipulation extended the time mentioned therein for procuring the assent of other interested parties thereto or an order of this court for the sale of said property set forth in said stipu-

lation to the 5th day of December, 1923, and it having been made to appear to the satisfaction of this court that it is for the best interests of the creditors of said estate that the real property hereinafter described be sold free and clear of all liens and encumbrances, any and all liens to be transferred to the proceeds derived from the sale, and that said sale be made on or before ninety days from and after the 10th day of November, 1923, and for divers other reasons that the said application is proper and should be granted;

Upon motion of Henderson Stockton, Esq., attorney for said trustee, no objections being manifested and no adverse interests appearing or being represented thereat, [32] it is ordered that Homer F. Allen, Esq., as trustee of David A. Jacobson, bankrupt, be and he is hereby authorized, directed and permitted to sell and dispose of, at public auction and in the manner and mode as prescribed by the Acts of Congress relating to bankruptcy and the General Orders of the Supreme Court of the United States, within ninety days from and after the 10th day of November, 1923, all of the real property hereinafter specifically described, free and clear of and from all liens and encumbrances described in said petition and in said order to show cause and as appears of record against said property, save and except only valid and subsisting leases on the real property hereinafter described, but free from the claims of any of the assignees of such leases, and that all liens and encumbrances against said real property be transferred to the

proceeds derived from said sale, and that said proceeds of and from the sale of the said real property be held by said trustee subject to all of the liens and encumbrances against said property, to all intents and purposes as though the said property had not been sold, except the expenses of administration, fees and commissions set forth in said stipulation hereinbefore referred to.

It is further ordered that said stipulation referred to herein be and the same is hereby approved, and it is ordered that the proceeds derived from the sale of the property hereinafter specifically described be applied in payment of the liens and encumbrances as set forth in said stipulation aforesaid; that the liens and encumbrances upon said property are as set forth in said stipulation and are in the order of priority as set forth in said stipulation.

It is further ordered that any of the parties holding liens or encumbrances upon the property hereinafter [33] specifically described may be a bidder at the trustee's sale and the amount due any such person in the order thereof as set forth in said stipulation, and hereby fixed in accordance therewith, may be applied on the payment of the purchase price if said party is the successful bidder at said trustee's sale, except that in all events there shall be paid in cash a sum equal to the expenses of administration in bankruptcy upon the property for which such bid is made and accepted, including among other items the expenses of sale, Referee's commissions, trustee's fees and commissions, and

attorney's fees of attorney for trustee in the amount of five per cent of the purchase price, as fixed by said stipulation aforesaid, which said sum is hereby fixed and established as reasonable compensation to the attorney for said trustee for the services he has rendered.

The real property aforesaid is described as follows, to wit, Lots 25, 26, 27, 28, 38 and 39 of the Town of Chandler, Maricopa County, Arizona, according to the map of said townsite recorded in Book 5 of Maps at page 34 thereof.

A separate order is being entered herewith respecting Lots 36 and 37 of the Town of Chandler, Maricopa County, Arizona.

That the hearing on said petition for sale of real property free and clear of encumbrances as the same applies to the east half of the southeast quarter of Section 10, Township 2 South, Range 5 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona, containing eighty acres, more or less, be and the same is hereby continued to the 8th day of December, 1923, at ten o'clock in the forenoon of said day.

It is further ordered that the Phoenix Savings Bank & Trust Company, a corporation, the Northern Trust Company, [34] a corporation, Katie Werner, the Bank of Chandler, a corporation, the Chandler Improvement Company, a corporation, Reuben Jacobson, the J. D. Halstead Lumber Company, a corporation, Ray Jacobson and Harry J. Collis each file separately his, her or its claim against David A. Jacobson in this bankruptcy pro-

ceeding, with a statement of the security held by him, her or it, within thirty days from the date of the service of a copy hereof upon him, her or it.

Dated December 3, 1923.

(Signed) R. W. SMITH,

Referee in Bankruptcy.

(Endorsed on back): In the District Court of the United States for the Federal District of Arizona. In Bankruptcy—No. 282—Phoenix. In the Matter of David Jacobson, Bankrupt. Henderson Stockton, Attorney for Trustee. (Ink) Filed Dec. 18, 1923, at 1:30 P. M. R. W. Smith, Referee.

United States of America,

District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect and complete copy of order directing sale of real property free and clear of liens, in [35] the Matter of David A. Jacobson, Bankrupt, as the same appears from the original records of the same remaining in my office.

Witness my hand and the seal of said court affixed this 16th day of December, 1924.

[Seal]

C. R. McFALL,

Clerk.

By M. R. Malcolm,

Deputy Clerk. [36]

In the District Court of the United States for the
Federal District of Arizona.

IN BANKRUPTCY—No. B-282—PHOENIX.

In the Matter of DAVID A. JACOBSON, Bank-
rupt.

RETURN OF SALE OF REAL PROPERTY.

The Trustee herein, Homer F. Allen, respect-
fully represents and shows:

That under and pursuant to an order of this
Court heretofore duly given, made and entered he
has sold to the Phoenix Savings Bank & Trust
Company, a corporation, for the sum of fifteen
thousand five hundred twenty-seven and 64/100
dollars (\$15,527.64), free and clear of liens and
encumbrances, the following described real prop-
erty situate in the town of Chandler, in Maricopa
County, Arizona, to wit:

Lot twenty-five (25) of the town of Chan-
dler, in Maricopa County, Arizona, together
with the improvements thereon.

That before making said sale your Trustee ad-
vertised said real property for sale in each issue
of both the "Arizona Republican" and the "Chan-
dler Arizonian," beginning on the 10th day of Janu-
ary, 1924, and ending on the 7th day of February,
1924. Said advertisement in said papers was in
the words and figures following, to wit:

"Trustee's Sale.

On Thursday, February 7th, 1924, I will sell to

the highest bidder for cash the following described real property belonging to the estate of David A. Jacobson, bankrupt.

Lot 25, Town of Chandler,

Lots 26, 27 and 28, Town of Chandler,

Lots 36 and 37, Town of Chandler,

Lots 38 and 39, Town of Chandler.

Said sale to be held in my office, rooms 411, 412, National Bank of Arizona Building, Phoenix, [37] Arizona. A deposit of ten per cent of amount must accompany each bid. Sale to be made subject to confirmation by the Bankruptcy Court and the right is reserved to reject any and all bids.

HOMER F. ALLEN,

Trustee in Bankruptcy for David A. Jacobson,
Bankrupt."

That on the 7th day of February, 1924, pursuant to the notice contained in said advertisement, your Trustee offered for sale at his offices, rooms 411, 412, National Bank of Arizona Building, the aforescribed real property, and did not receive at said offices of your petitioner any bid, but a bidder appeared there who desired to present his bid for said property to your Trustee in the office of the Referee in charge of the bankruptcy of David A. Jacobson. Whereupon on said 7th day of February, 1924, at ten o'clock in the forenoon of said day, at the office of R. W. Smith, Esquire, Referee in Bankruptcy, in charge of the bankruptcy of said David A. Jacobson, at room 208 Heard Building, Phoenix, Arizona, a bid in the sum of \$15,527.64 was presented to your Trus-

tee by the Phoenix Savings Bank & Trust Company, a corporation, and was by your Trustee then accepted, subject to confirmation of the Court.

At the aforesaid Referee's office, at the date and hour aforesaid, there were present the Trustee, Homer F. Allen; Messrs. Zimmerman & Mulhern, attorneys representing the bankrupt, Katie Werner and certain other interested parties; Harry L. Hancock was present in person and was represented by his counsel, Kibbey, Bennett, Gust & Smith, and C. A. Baldwin, of Chandler, Arizona, was present in person representing himself, and Arthur E. Price, Esquire, was present, representing the Northern Trust Company, a corporation, and certain other interested parties.

That no other bids were received by your Trustee for [38] the aforescribed real property. That since the election of your Trustee he has endeavored to sell said real property. That the bid made by the Phoenix Savings Bank & Trust Company is the only bid that he has received for said property, notwithstanding many persons have investigated the same. That the bid of the Phoenix Savings Bank & Trust Company, a corporation, was the highest and best bid received for said property and constitutes the fair value thereof.

WHEREFORE, said Trustee prays for an order approving and confirming said sale of said property to said Bidder, and that the Trustee be authorized and directed to make, execute and deliver to the said purchaser a trustee's deed to said

real property upon receipt of the said purchase price.

(Signed) HOMER F. ALLEN,
Trustee.

(Signed) HENDERSON STOCKTON,
Attorney for Trustee.

United States of America,
Federal District of Arizona,
State of Arizona,
County of Maricopa,—ss.

Homer F. Allen, being upon his oath first duly sworn, deposes and says: That he is the Trustee of David A. Jacobson, bankrupt; that he has read the foregoing return of sale of real property; that he believes the statements in said return contained to be true.

(Signed) HOMER F. ALLEN.

Subscribed and sworn to before me this 3d day of ~~February~~, 1924.

March

[Seal] (Signed) HELEN ERICKSON,
Notary Public.

My commission expires Nov. 24, 1927. [39]

(Endorsed on back): Filed Mch. 3, 1924, at 11:55 A. M. R. W. Smith, Referee.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect and complete copy of return of sale of real

property, In the Matter of David A. Jacobson, Bankrupt, as the same appears from the original records of the same remaining in my office.

Witness my hand and the seal of said court affixed this 17th day of December, 1924.

[Seal]

C. R. McFALL,

Clerk.

By Chas. H. Adams,

Deputy Clerk. [40]

In the District Court of the United States for the Federal District of Arizona.

IN BANKRUPTCY—No. B-282—PHOENIX.

In the Matter of DAVID A. JACOBSON, Bankrupt.

RETURN OF SALE OF REAL PROPERTY.

The Trustee herein, Homer F. Allen, respectfully represents and shows:

That under and pursuant to an order of this Court heretofore duly given, made and entered he has sold to the Northern Trust Company, a corporation, for the sum of fifteen thousand five hundred forty-seven and 70/100 dollars (\$15,547.70), free and clear of liens and encumbrances, the following described real property situate in the town of Chandler, in Maricopa County, Arizona, to wit:

Lots twenty-six (26), twenty-seven (27) and twenty-eight (28) in the town of Chandler,

Maricopa County, Arizona, together with the improvements thereon.

That before making said sale your Trustee advertised said real property for sale in each issue of both the "Arizona Republican" and the "Chandler Arizonian," beginning on the 10th day of January, 1924, and ending on the 7th day of February, 1924. Said advertisement in said papers was in the words and figures following, to wit:

"Trustee's Sale.

On Thursday, February 7th, 1924, I will sell to the highest bidder for cash the following described real property belonging to the estate of David A. Jacobson, bankrupt.

Lot 25, Town of Chandler,
 Lots 26, 27 and 28, Town of Chandler,
 Lots 36 and 37, Town of Chandler,
 Lots 38 and 39, Town of Chandler. [41]

Said sale to be held in my office, rooms 411, 412, National Bank of Arizona Building, Phoenix, Arizona. A deposit of ten per cent of amount must accompany each bid. Sale to be made subject to confirmation by the Bankruptcy Court and the right is reserved to reject any and all bids.

HOMER F. ALLEN,

Trustee in Bankruptcy for David A. Jacobson,
 Bankrupt."

That on the 7th day of February, 1924, pursuant to the notice contained in said advertisement, your Trustee offered for sale at his offices, rooms 411, 412, National Bank of Arizona Building, the aforedescribed real property, and did not receive

at said offices of your petitioner any bid, but a bidder appeared there who desired to present his bid for said property to your Trustee in the office of the Referee in charge of the bankruptcy of David A. Jacobson. Whereupon on said 7th day of February, 1924, at ten o'clock in the forenoon of said day, at the office of R. W. Smith, Esquire, Referee in Bankruptcy, in charge of the bankruptcy of said David A. Jacobson, at room 208 Heard Building, Phoenix, Arizona, a bid in the sum of \$15,547.70 was presented to your Trustee by the Northern Trust Company, a corporation, and was by your Trustee then accepted, subject to confirmation of the Court.

At the aforesaid Referee's office, at the date and hour aforesaid, there were present the Trustee, Homer F. Allen; Messrs. Zimmerman & Mulhern, attorneys representing the bankrupt, and Katier Werner, and certain other interested parties; Arthur E. Price, Esquire, was present representing the Northern Trust Company, a corporation, and certain other interested parties; Harry L. Hancock was present in person and was represented by his counsel, Kibbey, Bennett, Gust & Smith, and C. A. Baldwin, of Chandler, Arizona, was present in person, representing himself.

That no other bids were received by your Trustee for the aforescribed real property. That since the election of your [42] Trustee he has endeavored to sell said real property. That the bid made by the Northern Trust Company is the only bid that he has received for said property,

notwithstanding many persons have investigated the same. That the bid of the Northern Trust Company, a corporation, was the highest and best bid received for said property and constitutes the fair value thereof.

WHEREFORE, said Trustee prays for an order approving and confirming said sale of said property to said Bidder, and that the Trustee be authorized and directed to make, execute and deliver to the said purchaser a trustee's deed to said real property upon receipt of the said purchase price.

(Signed) HOMER F. ALLEN,
Trustee.

(Signed) HENDERSON STOCKTON,
Attorney for Trustee.

United States of America,
Federal District of Arizona,
State of Arizona,
County of Maricopa,—ss.

Homer F. Allen, being upon his oath first duly sworn, deposes and says: That he is the Trustee of David A. Jacobson, bankrupt; that he has read the foregoing return of sale of real property; that he believes the statements in said return contained to be true.

(Signed) HOMER F. ALLEN.

Subscribed and sworn to before me this 3d day of March, 1924.

[Seal] (Signed) HELEN ERICKSON,
Notary Public.

My commission expires Nov. 24, 1927. [43]

(Endorsed on back): (Ink) Filed Meh. 3, 1924,
at 11:54 A. M. (Signed) R. W. Smith, Referee.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect and complete copy of return of sale of real property, In the Matter of David A. Jacobson, Bankrupt, as the same appears from the original records of the same remaining in my office.

Witness my hand and the seal of said court affixed this 17th day of December, 1924.

[Seal]

C. R. McFALL,
Clerk.

By Chas. H. Adams,
Deputy Clerk. [44]

In the District Court of the United States for the
Federal District of Arizona.

IN BANKRUPTCY—No. B-282—PHOENIX.

In the Matter of DAVID A. JACOBSON, Bankrupt.

ORDER CONFIRMING SALE OF REAL
PROPERTY.

The Trustee, Homer F. Allen, having filed therein his return of sale, from which return of sale it appears that under and pursuant to an order of this Court heretofore duly given, made and en-

tered he has sold lot 25 of the town of Chandler, Maricopa County, Arizona, free and clear of encumbrances, to the Phoenix Savings Bank & Trust Company, a corporation, for the sum of fifteen thousand five hundred twenty-seven and 64/100 dollars (\$15,527.64).

AND IT FURTHER APPEARING TO THE COURT that the amount of the bid of said Phoenix Savings Bank & Trust Company represents the fair value of said property, and that it is for the best interests of said estate in bankruptcy that said sale be approved and confirmed.

NOW, THEREFORE, on motion of Henderson Stockton, attorney for said Trustee,

IT IS ORDERED, that the sale by said Trustee, Homer F. Allen to the Phoenix Savings Bank & Trust Company, a corporation, of lot 25 of the town of Chandler, Maricopa County, Arizona, free and clear of all liens and encumbrances be and the same is hereby approved and confirmed.

Said Trustee is ordered and directed to make, execute and deliver to the said Phoenix Savings Bank & Trust Company, a corporation, a trustee's deed to said property upon receipt of the purchase price. [45]

Said Trustee is further ordered and directed to pay out of the purchase price to the Phoenix Savings Bank & Trust Company, a corporation, the sum of \$14,103.97, which sum is the amount of the lien of the Phoenix Savings Bank & Trust Company, a corporation, upon said property, heretofore fixed and agreed upon by stipulation and order

of this Court dated the 3d day of December, 1923, and order of this Court of even date herewith, and hereby approved and allowed.

Said Trustee is further ordered and directed to pay out of the purchase price to Henderson Stockton the sum of \$776.28 as attorney's fees, being five per cent of \$15,527.64, the purchase price of said property, which sum was heretofore by stipulation of the interested parties agreed upon and by order of December 3, 1923, approved and allowed, and which sum is hereby approved and allowed as his fee for services rendered in connection with said sale.

Said Trustee is further ordered and directed to pay out of the purchase price to Homer F. Allen, Trustee, the sum of \$192.16, being the *pro rata* amount of Trustee's fee upon the entire estate amounting to \$58,515.09; the aggregate amount of trustee's fee is \$725.15 and calculated on the basis of 26.5% of the total trustee's fee on said sum.

Said Trustee is further ordered to pay to Homer F. Allen the sum of \$80.37, reimbursement of expenses of sale of said property on a basis of total expense \$303.27 prorated and being 26.5 per cent of total.

Said Trustee is further ordered and directed to pay out of the purchase price to R. W. Smith, Esquire, Referee in Bankruptcy, the sum of \$141.04,

~~\$155.28~~, being referee's commission of one per cent
14,103.97,

on ~~\$15,527.64~~, the sale price of said property.

IT IS ORDERED that the fees of the Trustee

and expenses [46] of the Trustee and commissions of the Referee and the amounts hereinbefore stated be and they are hereby fixed, established, allowed and ordered paid in accordance with the stipulation of the parties and the order of the Referee dated the 3d day of December, 1923, and as herein provided.

Any review of this order shall be taken within ten days from and after the date hereof.

Dated at Phoenix, Arizona, March 3d, 1924.

(Signed) R. W. SMITH,
Referee.

(Endorsed on back): Filed Mch. 3, 1924, at 11:57 A. M. R. W. Smith, Referee.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect and complete copy of order confirming sale of real property, In the Matter of David A. Jacobson, Bankrupt, as the same appears from the original records of the same remaining in my office.

Witness my hand and the seal of said court affixed this 17th day of December, 1924.

[Seal]

C. R. McFALL,
Clerk.

By Chas. H. Adams,
Deputy Clerk. [47]

In the District Court of the United States for the
Federal District of Arizona.

IN BANKRUPTCY—No. B-282—PHOENIX.

In the Matter of DAVID A. JACOBSON, Bank-
rupt.

ORDER CONFIRMING SALE OF REAL
PROPERTY.

The Trustee, Homer F. Allen, having filed herein his return of sale, from which return of sale it appears that under and pursuant to an order of this Court heretofore duly given, made and entered, he has sold Lots 26, 27 and 28, of the town of Chandler, Maricopa County, Arizona, free and clear of encumbrances, to the Northern Trust Company, a corporation, for the sum of fifteen thousand five hundred forty-seven and 70/100 dollars (\$15,547.70).

AND IT FURTHER APPEARING TO THE COURT that the amount of the bid of said Northern Trust Company represents the fair value of said property, and that it is for the best interests of said estate in bankruptcy that said sale be approved and confirmed;

NOW, THEREFORE, on motion of Henderson Stockton, attorney for said Trustee,

IT IS ORDERED, that the sale by said Trustee, Homer F. Allen, to the Northern Trust Company, a corporation, of Lots 26, 27 and 28 of the town of Chandler, Maricopa County, Arizona, free

and clear of all liens and encumbrances be, and the same is hereby approved and confirmed.

Said Trustee is ordered and directed to make, execute and deliver to the said Northern Trust Company, a corporation, a trustee's deed to said property upon receipt of the purchase price.

Said Trustee is further ordered and directed to pay out of the purchase price to the Northern Trust Company, a corporation, [48] the sum of \$14,322.50, which sum if the amount of the lien of the Northern Trust Company, a corporation, upon said property, heretofore fixed and agreed upon by stipulation and order of this Court dated the 3d day of December, 1923, and order of this Court of even date herewith, and hereby approved and allowed.

Said Trustee is further ordered and directed to pay out of the purchase price to Henderson Stockton the sum of \$777.39, as attorney's fees, being five per cent of \$15,547.70, the purchase price of said property, which sum was heretofore by stipulation of the interested parties agreed upon and by order of December 3, 1923, approved and allowed, and which sum is hereby approved and allowed as his fee for services rendered in connection with said sale.

Said Trustee is further ordered and directed to pay out of the purchase price to Homer F. Allen, Trustee, the sum of \$192.16, being the *pro rata* amount of Trustee's fee upon the entire estate amounting to \$58,515.09; the aggregate amount of

Trustee's fee is \$725.15 and calculated on the basis of 26.5% of the total Trustee's fee on said sum.

Said Trustee is further ordered to pay to Homer F. Allen the sum of \$80.37, reimbursement of expenses of sale of said property on basis of total expense \$303.27 prorated and being 26.5% of total.

Said Trustee is further ordered and directed to pay out of the purchase price to R. W. Smith, Esquire, Referee in Bankruptcy, the sum of \$143.23, being Referee's commission of one per cent on \$14,322.50, the sale price of said property.

IT IS ORDERED that the fees of the Trustee and expenses of the Referee and the amounts hereinbefore stated be and they are hereby fixed, established, allowed and ordered paid in [49] accordance with the stipulation of the parties and the order of the Referee dated the 3d day of December, 1923, and as herein provided.

Any review of this order shall be taken within ten days from and after the date hereof.

Dated at Phoenix, Arizona, March 3d, 1924.

(Signed) R. W. SMITH,
Referee.

(Endorsed on back): (Ink) Filed Mch. 3, 1924,
at 11:56 A. M. (Signed) R. W. Smith, Referee.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect and complete copy of order confirming sale of

real property, In the Matter of David A. Jacobson, Bankrupt, as the same appears from the original records of the same remaining in my office.

Witness my hand and the seal of said court affixed this 17th day of December, 1924.

[Seal]

C. R. McFALL,

Clerk.

By Chas. H. Adams,

Deputy Clerk. [50]

In the District Court of the United States, for
the Federal District of Arizona.

IN BANKRUPTCY—B-282.

In the Matter of DAVID A. JACOBSON, Bankrupt.

PETITION OF KATIE WERNER FOR ORDER
SETTING ASIDE ORDER OF SALE, SALE
OF REAL PROPERTY, AND ORDER CONFIRMING
SALE OF REAL PROPERTY.

To the Honorable R. W. SMITH, One of the Referees in Bankruptcy in the District Court of the United States for the Federal District of Arizona, at Phoenix.

The petition of Katie Werner, a creditor of David A. Jacobson, bankrupt, respectfully represents:

(1) That she is a creditor of the above-named bankrupt, said bankrupt's indebtedness to her being evidenced by two certain promissory notes in the principal sums of \$2,000 each, secured by second realty mortgages upon Lot 25 and Lots 26, 27 and

28, respectively, of the town of Chandler, Maricopa County, Arizona, according to the map or plat thereof on file and of record in the office of the County Recorder of said Maricopa County, Arizona, title to said lots 25, 26, 27 and 28 being vested in said David A. Jacobson on the date of his bankruptcy herein.

(2) That her proof (ink) of her said secured debt has been duly filed herein, to which proof of debt is hereby made reference.

(3) That said lot 25 was duly appraised by appraisers duly appointed by this Court at the sum of \$18,000, and said lots 26, 27, and 28, were so appraised at the sum of \$20,000. That at the time of bankruptcy and at all times prior to the sale hereinafter mentioned said lot 25 was incumbered by mortgage liens in an amount of [51] more than \$16,000 and at said times lots 26, 27 and 28 were incumbered by mortgage liens in an amount in excess of \$16,000.

(4) That on the 23d of October, 1923, Homer F. Allen, Trustee of the estate of said David A. Jacobson, bankrupt, filed herein his report and petition for an order to sell said lots 25, 26, 27, and 28, town of Chandler, together with other real property of said bankrupt, subject to all existing liens and encumbrances and on the matter thereafter coming on for hearing on said petition before R. W. Smith, Referee in Bankruptcy, said Referee did, on the 10th of November, 1923, make and enter an order authorizing said Trustee to sell at public sale, sub-

ject to all existing liens and incumbrances, said Lots 25, 26, 27 and 28, and said other real property.

(5) That on or about the 8th of November, 1923, Zimmerman & Mulhern, a firm of attorneys representing your petitioner herein, without her actual knowledge, and at the request of A. Henderson Stockton, attorney for said Trustee, signed a stipulation theretofore prepared by said A. Henderson Stockton, wherein it was provided that said Lots 25, 26, 27 and 28, and other real property of the bankrupt should be sold by said Homer F. Allen, Trustee, on any date not later than 90 days from the date of said stipulation, free and clear of all liens against said property, except leases on the same that were at the date of said stipulation valid but free from the claims of any assignees of any of such leases. That at the same time and place, Arthur E. Price, attorney for the first mortgage lienholders, and said A. Henderson Stockton, attorney for said Trustee, signed said stipulation. That said stipulation expressly provided that

“15. It is further stipulated and agreed that all persons who have or assert liens upon the real property herein described shall be bound by the terms hereof upon assenting hereto in writing by the signing of this stipulation,
. . .”

it being intended and contemplated, to the full knowledge of said firm of Zimmerman & Mulhern, said Arthur E. Price, and said A. Henderson Stockton, that said stipulation was to be presented to all [52] parties having liens on said real property for

their personal assent in writing and signature and that said stipulation should be personally assented to and signed by the particular lienor before becoming effective as to him or her. That your petitioner never signed said stipulation or in any way assented thereto. That on the day following the signature of said stipulation by said attorneys said R. W. Smith, Referee, was notified that your petitioner would not assent to or sign said stipulation. That said stipulation is on file with said Referee and reference thereto is hereby made.

(6) That on November 20, 1923, said Trustee filed herein his verified petition praying for an order to show cause upon your petitioner and other lienholders why an order should not be entered authorizing and directing him as Trustee to sell said Lots 25, 26, 27 and 28, town of Chandler, and other real property free and clear of all liens and incumbrances, the liens then existing upon said property to be transferred to the proceeds derived from the sale thereof,

“conditioned upon the purchase price at Trustee’s sale of said property and of Lots 25, 26, 27 and 28, 36, 37, 38 and 39, being sufficient to pay all of the liens against all of said property,”

and for an order, after notice to creditors, for the sale of said real property in said petition described free of incumbrance. Reference is hereby made to said petition on file and of record in this court and cause.

That under date of November 21, 1923, said R. W. Smith, Referee, made and entered an order directing this petitioner, Katie Werner, and nine other lienors, to appear before him on the 3d of December, 1923, at 10 o'clock A. M., then and there to show cause, if any they had, why the prayer of the petition last above mentioned should not be granted and why an order should not be made and entered authorizing and directing said Homer F. Allen, as Trustee, to sell said Lots 25, 26, 27 and 28, town of Chandler, and other real property, free and clear of all liens and incumbrances, the liens then existing to be transferred to the proceeds of sale, [53]

“conditioned upon the purchase price at Trustee’s sale of said property of lots 25, 26, 27 and 28 and 36, 37, 38 and 39, being sufficient to pay all of the liens against all of said property”; and further why said sale of said property, free and clear of liens and incumbrances, should not be made on or before 90 days from and after the 10th day of November, 1923. Said order further provided that service of the order to show cause be made upon the respondents therein named, including your petitioner, by depositing a copy of the order, together with a copy of said Trustee’s petition in an envelope addressed to each respondent at his or her address as given in the schedules in bankruptcy or to his or her last known address in the United States Mail at Phoenix, Arizona, duly registered, postage and registry fee paid, or by the delivery of a copy thereof together with a copy of said petition to each of the parties named therein. That no copy

of said order to show cause and no copy of said petition was ever delivered to your petitioner personally or by registered mail, or otherwise, nor had she, prior to the sale hereinafter mentioned, any actual personal knowledge of said order.

(7) That on December 3, 1923, upon the hearing of said petition of the said trustee to sell free and clear of liens and incumbrances, said Referee in Bankruptcy made and entered a minute order granting the petition of said Trustee and authorized and directed him to, sell said Lots 25, 26, 27 and 28, town of Chandler, and said other real property free and clear of all liens and incumbrances.

That on the 18th of December, 1923, said Referee made and entered a formal order dated December 3, 1923, authorizing, directing and permitting said Trustee to sell and dispose of at public auction

“and in the manner and mode as prescribed by the Acts of Congress relating to bankruptcy and the General Orders of the Supreme Court of the United States, within 90 days from and after the 10th day of November, 1923, all of the real property hereinafter specifically described, free and clear of and from all liens and incumbrances described in said petition and in said order to show cause and as appears of record against said property, save and except only valid and subsisting leases on the real property hereinafter described, but free from [54] the claim of any of the assignees of such leases, and that all liens and incumbrances against said

real property be transferred to the proceeds derived from said sale, and that said proceeds of and from the sale of the said real property be held by said Trustee subject to all of the liens and incumbrances against said property, to all intents and purposes as though the said property had not been sold, except the expenses of administration, fees and commissions set forth in said stipulation hereinbefore referred to.”

said Lots 25, 26, 27 and 28, town of Chandler, and said other real property. Said order further provided

“that said stipulation referred to herein be, and the same is hereby, approved, and it is ordered that the proceeds derived from the sale of the property hereinafter specifically described be applied in payment of the liens and incumbrances as set forth in said stipulation aforesaid; that the liens and incumbrances upon said property are as set forth in said stipulation and are in the order of priority as set forth in said stipulation.”

but wholly failed to direct that said sale, free and clear of liens and incumbrances, be conditioned upon the purchase price at Trustee's sale of said real property being sufficient to pay all the liens against all of said property.

That by reason of the facts herein alleged said Referee had no jurisdiction to make and enter said order of sale of December 18th, 1923, dated December 3, 1923, and the same is wholly null and void.

(8) That on or about January 10th, 1924, and for several issues thereafter, said Homer F. Allen, Trustee, caused to be published in the "Chandler Arizonan," a weekly newspaper published in the town of Chandler, Maricopa County, Arizona, a notice in the following words and figures, to wit:

"Trustee's Sale.

Thursday, February 7th, 1924, I will sell to the highest bidder for cash, the following described real property, belonging to the estate of David A. Jacobson, bankrupt,—Lot 25, town of Chandler, Lots 26, 27 and 28, town of Chandler, Lots 36 and 37, town of Chandler, Lots 38 and 39, town of Chandler. Said sale to be held in my office, Rooms 411-412, Nat'l Bank of Ariz. Building, Phoenix, Arizona. A deposit of 10% of amount must accompany each bid. Said sale to be made subject to confirmation by the bankruptcy court and the right is reserved to reject any and all bids.

HOMER F. ALLEN,

Trustee in Bankruptcy for David A. Jacobson,
Bankrupt." [55]

and on or about the same time caused a similar notice to be published on the "Arizona Republican," a daily newspaper, published at Phoenix, Maricopa County, Arizona, and as your petitioner is credibly informed and believes and therefore alleges, posted copies of said notice on the premises therein described. That your petitioner is credibly informed, verily believes and therefore alleges, no notice of said proposed sale was given to the creditors of said

David A. Jacobson, bankrupt, as required by law, and no public notice of said sale whatsoever was given other than as hereinbefore alleged.

(9) That your petitioner is credibly informed, verily believes, and therefore alleges, that no sale by public auction was had or held by said Trustee at Rooms 411-412 National Bank of Arizona Building, at Phoenix, Arizona, on February 7th, 1924, or at any other time or place.

That on said 7th of February, 1924, at the hour of 10 o'clock A. M. or thereabouts there appeared at the office of said R. W. Smith, Referee, at Room 208, Heard Building, in Phoenix, Maricopa County, Arizona, said Arthur E. Price, attorney for Phoenix Savings Bank & Trust Company and Northern Trust Company, corporations, and holders of first mortgages on said Lots 25, 26, 27 and 28, town of Chandler, and submitted to said Referee a bid of \$15,527.64 for said lot 25, and a bid of \$15,547.70 for said Lots 26, 27 and 28; said bids being made on behalf of said corporation, respectively, that said (ink) at time and place said Homer F. Allen, Trustee, was present. That said bids were then and there accepted by said Referee and said real property was sold to said bidders. That said bids and the purchase price obtained at said sale were wholly insufficient to pay off all of the liens on said Lots 25, 26, 27 and 28, and were only a little more than sufficient to pay the first mortgages against the said property and the expenses of sale thereof.

That by reason of the facts before stated said sale and purchase are wholly null and void and to the

actual knowledge at that time, [56] of said Trustee and said bidders or purchasers said sale and the proceedings preliminary thereto were not so conducted as to obtain the best and highest price for said real property.

That since the appraisalment of said Lots 25, 26, 27 and 28, town of Chandler, Maricopa County, Arizona, pursuant to the order of this Court as aforesaid the market value of said real property has steadily increased and always has been, and now is, of much greater value than the sums bid as herein alleged.

(10) That on the 3d of March, 1924, this Court, R. W. Smith, Referee, made and entered an order approving and confirming the sale of said lots to said purchasers and ordering and directing said Trustee to make, execute and deliver Trustee's deeds to said properties upon receipt of the purchase price therefor and to pay out of said purchase price certain sums as constituting the first mortgage liens against said properties and the expenses of the sale thereof. That reference is hereby made to said order of confirmation of sale on file and of record in this court and cause.

(11) That your petitioner is credibly informed, verily believes, and therefore alleges that the purchasers of said Lots 25, 26, 27 and 28, aforesaid, have wholly failed to pay the said Trustee the purchase price of said real property and that no Trustee's deeds have been made, executed and delivered to said purchasers.

WHEREFORE, your petitioner respectfully prays that an order be made and entered wholly

setting aside and holding for naught the hereinbefore mentioned order of sale dated December 3, 1923, the sale held pursuant thereto on February 7, 1924, and the order confirming said sale dated March 3, 1924, and for a further order directing that a copy of this petition be served upon said Homer F. Allen, Trustee, and upon said Phoenix Savings Bank & Trust Company, and Northern Trust Company, corporations, by the delivery to them of a true copy thereof, or to their respective attorneys of record; and for a further order directing said Homer F. Allen, said Phoenix Savings Bank & Trust Company, and said Northern Trust Company, to [57] appear on a date certain after such service upon them, and make answer to this petition, if any they have to make, and for due, proper and speedy hearing upon this petition and for such other and further relief as this petitioner seems to be entitled to the law and premises considered.

October 13, 1924.

(Signed) ZIMMERMAN & MULHERN,
Attorneys for Petitioner.

State of Arizona,
Maricopa County, —ss.

D. V. Mulhern, being by me first duly sworn, on his oath deposes and says that he is one of the attorneys for the petitioner in the foregoing petition; that he is making this affidavit in her behalf because of her absence from the County of Maricopa and State of Arizona, that he has read the foregoing petition and knows the contents thereof, that the

same are true of his own knowledge save and except as to the matters and things therein stated on information and belief and as to them he believes same to be true.

(Signed) D. V. MULHERN,
For Petitioner.

Subscribed and sworn to before me, this 13th day of October, 1924.

[Seal] (Signed) E. A. MARSHALL,
Notary Public.

(My com. exp. Feb. 17, 1928.)

(Endorsed on back): Filed Oct. 13, 1924., at 11 A. M. (Signed) R. W. Smith, Referee.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above [58] and foregoing is a true, perfect and complete copy of petition of Katie Werner for order setting aside order of sale, sale of real property, and order confirming sale of real property, In the Matter of David A. Jacobson, Bankrupt, as the same appears from the original records of the same remaining in my office.

Witness my hand and the seal of said court affixed this 17th day of December, 1924.

[Seal] C. R. McFALL,
Clerk.

By Chas. H. Adams,
Deputy Clerk. [59]

In the District Court of the United States in and
for the Federal District of Arizona.

PHOENIX—B-282.

In the Matter of DAVID A. JACOBSON, Bank-
rupt.

PROOF OF SERVICE.

State of Arizona,
Maricopa County,—ss.

I, D. V. Mulhern, of the above county and State, being first duly sworn on my oath depose and say: That on October 14, 1924, I served the petition of Katie Werner for order setting aside "order of sale," "sale of real property," and "order confirming real property," filed in the above court and cause, October 13, 1924, upon Phoenix Savings Bank & Trust Company, a corporation, and Northern Trust Company, a corporation, by depositing a true copy thereof in the U. S. postoffice at Phoenix, Arizona, enclosed in an envelope addressed to Arthur E. Price, Chandler, Arizona, attorney of record for said corporations, by registered mail, postage and registry fee paid; that I served said petition upon Homer F. Allen, Trustee of said estate, by delivering a true copy thereof to the office of A. Henderson Stockton, attorney of record for said trustee of David A. Jacobson, bankrupt, in National Bank of Arizona Building, Phoenix, Arizona.

(Signed) D. V. MULHERN.

Subscribed and sworn to before me this 14th of October, 1924.

[Seal] (Signed) O. E. SCHUPP,
Notary Public.

(My com. exp. Feb. 15, 1928.)

(Endorsed on back): Filed Oct 15, 1924, at 9 A. M. [60] R. W. Smith, Referee.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect and complete copy of proof of service, In the Matter of David A. Jacobson, Bankrupt, as the same appears from the original records of the same remaining in my office.

Witness my hand and the seal of said court affixed this 17th day of December, 1924.

[Seal] C. R. McFALL,
Clerk.

By Chas. H. Adams,
Deputy Clerk. [61]

In the District Court of the United States for the
Federal District of Arizona.

IN BANKRUPTCY—No. B-282—PHOENIX.

In the Matter of DAVID A. JACOBSON, Bankrupt.

ORDER DISMISSING PETITION.

Katie Werner, by her attorneys, Zimmerman & Mulhern, having on the 13th day of October, 1924, filed with the referee her petition praying for an order setting aside that certain order of the referee made herein on the 3d day of December, 1923, authorizing the sale of Lots 25, 26, 27 and 28, of the Town of Chandler, Maricopa County, Arizona; and also praying for an order setting aside that certain order of the referee herein made on the 3d day of March, 1924, confirming the sale of said property; and the referee having taken said matter under advisement, and it now appearing to the referee, after due and careful consideration thereof that he has no jurisdiction to hear and determine the matters presented in said petition;

It is therefore ordered that the said petition be and the same is hereby dismissed.

Dated November 8th, 1924.

(Signed) R. W. SMITH,
Referee in Bankruptcy.

(Endorsed on back): Filed Nov. 8, 1924, at 3 P. M. R. W. Smith, Referee. [62]

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect and complete copy of order dismissing petition, In the Matter of David A. Jacobson,

Bankrupt, as the same appears from the original records of the same remaining in my office.

Witness my hand and the seal of said court affixed this 17th day of December, 1924.

[Seal]

C. R. McFALL,

Clerk.

By Chas. H. Adams,

Deputy Clerk. [63]

In the District Court of the United States for the
District of Arizona.

No. B-282—PHOENIX.

(IN BANKRUPTCY.)

In the Matter of DAVID A. JACOBSON, Bank-
rupt.

EXCEPTIONS TO ORDER DENYING PETI-
TION FOR REVIEW.

Comes now Katie Werner, petitioner in that certain petition, filed in the above-entitled cause, for an order setting aside that certain sale of real property of said bankrupt, to wit: Lots 25, 26, 27 and 28, Town of Chandler, Maricopa County, Arizona, heretofore made on the 7th day of February, 1924, and the order of sale and order of confirmation of said sale, by her attorneys, Zimmerman & Mulhern, and objects and excepts to the ruling and order of R. W. Smith, Referee in Bankruptcy in charge of said matter, made and entered on this 26th day of November, 1924, which ruling and order

denied her petition to set aside said order of sale, sale of real property and order confirming such sale of real property filed herein on October 13, 1924, and denied her demand that an order to show cause be issued on said petition.

Said Katie Werner further objects and excepts to said Referee's acts in refusing to sign, issue and file that certain order to Homer F. Allen, trustee, Phoenix Savings Bank and Trust Company, a corporation, and Northern Trust Company, a corporation, to show cause why the above-mentioned petition should not be granted, which order to show cause was on the 3d day of November, 1924, tendered to said Referee to be signed, issued and filed, by this petitioner.

Dated November 8, 1924.

ZIMMERMAN & MULHERN,
By (Signed) D. V. MULHERN,
Attorneys for Katie Werner. [64]

(Endorsed on back): Filed Nov. 10th, 1924, at 9 A. M. R. W. Smith, Referee.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect and complete copy of exceptions by Katie Werner to order denying petition for review, In the Matter of David A. Jacobson, Bankrupt, as the same appears from the original records of the same remaining in my office.

Witness my hand and the seal of said court
affixed this 17th day of December, 1924.

[Seal]

C. R. McFALL,
Clerk.

By Chas. H. Adams,
Deputy Clerk. [65]

In the District Court of the United States for the
Federal District of Arizona.

No. B-282 (PHOENIX).

In the Matter of DAVID A. JACOBSON, Bank-
rupt.

PETITION FOR REVIEW.

To the Honorable F. C. JACOBS, Judge of the
District Court of the United States in and
for the Federal District of Arizona:

The petition of Katie Werner, one of the se-
cured creditors of said bankrupt, respectfully rep-
resents:

(1) That on the 8th of November, 1924, mani-
fest errors to the prejudice of petitioner were
made by R. W. Smith, Referee in bankruptcy, in
charge of the above-entitled matter, in the matter
of "petition for order setting aside order of sale,
sale of real property, and order confirming sale
of real property," filed by this petitioner on the
13th of October, 1924, and in the order of said
referee made and entered on the 8th of Novem-
ber, 1924, denying said petition and refusing to

issue an order to show cause based on said petition and to the respondents therein and refusing to sign, issue and file said order to show cause prepared by your petitioner and tendered to said referee for such issuing on November 3, 1924.

(2) That petitioner herein, on October 13, 1924, filed with said referee a petition for an order setting aside the order of sale of Lots 25, 26, 27 and 28, of the town of Chandler, Maricopa County, Arizona, real property of said bankrupt, and for an order setting aside the sale of said real property and the order of said referee confirming the said sale. In said petition demand was made that Homer F. Allen, trustee, Phoenix Savings Bank and Trust Company, a corporation, and Northern Trust Company, a corporation, be ordered [66] to appear on a date certain after service of process upon them and make answer to said petition, if any they have, and for due, proper and speedy hearing on said petition. That, no action being taken on said petition by said referee, this petitioner, on November 3, 1924, demanded, in open court, before said referee, that an order to show cause be issued for said respondents to make answer to said petition and to show cause, if any they had, why the prayer of said petition should not be granted, and, at the same time tendered to said referee, for signing, issuing and filing a properly prepared "order to show cause" as aforesaid.

(3) That due and proper service of said petition of October 13, 1924, was had upon the respondents therein by delivery to them of true

copies thereof and proof of such service was duly filed with said referee. That on the 8th of November, 1924, said referee made and entered, without hearing, an order denying said petition and refusing to issue said order to show cause, and on the same date returned to petitioner the order to show cause theretofore prepared and left with the said referee.

(4) That the errors complained of are:

(a) Said referee erred in denying the petition to set aside said order of sale, sale of real property, and order confirming sale of real property.

(b) Said referee erred in refusing to issue an order to show cause as requested by petitioner.

(c) Said referee erred in acting upon said petition without full and complete hearing thereon.

(d) That the acts and conduct of said referee and said order are wholly arbitrary and contrary to law and procedure.

WHEREFORE, Katie Werner, petitioner herein, prays this Honorable Court that it review the acts, conduct, findings and orders of said R. W. Smith, Referee, with reference to the matters hereinbefore set [67] forth and that said referee certify said matters to the Court, and for that purpose he, the said referee, send up with said certificate all exhibits, records, orders, and testimony taken concerning the matters hereinabove mentioned and that he, the said referee, be directed to issue an order to show cause upon said petition and take and preserve all evidence and testimony in connection therewith.

November 17, 1924.

(Signed) ZIMMERMAN & MULHERN,
Attorneys for the Petitioner.

(Endorsed on back): Filed Nov. 17, 1924, at
4:3 P. M. R. W. Smith, Referee.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect and complete copy of petition for review, In the Matter of David A. Jacobson, Bankrupt, as the same appears from the original records of the same remaining in my office.

Witness my hand and the seal of said court affixed this 17th day of December, 1924.

[Seal]

C. R. McFALL,
Clerk.

By Chas. H. Adams,
Deputy Clerk. [68]

In the District Court of the United States for the
District of Arizona.

No. B-282—PHOENIX.

In the Matter of DAVID A. JACOBSON, Bankrupt.

AFFIDAVIT—PROOF OF SERVICE.

United States of America,
Federal District of Arizona,—ss.

I, D. V. Mulhern, of the county of Maricopa, State of Arizona, being first duly sworn on oath deposes and says: That on November 17, 1924, I served the petition of Katie Werner for review of the order of R. W. Smith, Referee, dated November 8, 1924, in the matter of her petition to set aside order of sale of real property, sale of real property, and order confirming sale, upon Homer F. Allen, Trustee, Phoenix Savings Bank and Trust Company, a corporation, and Northern Trust Company, a corporation, by delivering a true copy thereof to A. Henderson Stockton, attorney of record for said trustee, at his office in Phoenix, Arizona, and by depositing a true copy thereof in the U. S. postoffice at Phoenix, Arizona, enclosed in an envelope addressed to Arthur E. Price, Chandler, Arizona, attorney of record for said corporations, by registered mail, postage and registry fees paid.

(Signed) D. V. MULHERN.

Subscribed and sworn to before me this 18th day of November, 1924.

[Seal] (Signed) E. A. MARSHALL,

Notary Public, Maricopa County, Arizona, and
Within the Federal District of the State of
Arizona.

My commission expires Feb. 17, 1928. [69]

(Endorsed on back): Filed Nov. 18, 1924, at 3 P. M. R. W. Smith, Referee.

Filed C. R. McFall, Clerk. Nov. 20, 1924. United States District Court for the District of Arizona. By Chas. H. Adams, Deputy Clerk.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect and complete copy of Affidavit—Proof of Service, in the Matter of David A. Jacobson, Bankrupt, as the same appears from the original records of the same remaining in my office.

Witness my hand and the seal of said Court affixed this 17th day of December, 1924.

[Seal]

C. R. McFALL,
Clerk.

By Chas H. Adams,
Deputy Clerk. [70]

Regular October, 1924, Term, at Phoenix.

In the United States District Court in and for the
District of Arizona.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

(Minute Entry of Tuesday, December 9th, 1924.)
No. B-282 (PHOENIX).

In the Matter of DAVID A. JACOBSON, Bank-
rupt.

MINUTES OF COURT—DECEMBER 9, 1924—
ORDER DENYING PETITION FOR RE-
VIEW.

Petition of Katie Werner for reveiw herein is
now heard,—

WHEREUPON, IT IS ORDERED BY THE
COURT that the said petition be and the same is
hereby denied.

IT IS FURTHER ORDERED that the action of
the Referee in confirming the sale by the Trustee
herein be, and it is hereby confirmed by this Court.

Exceptions are ordered entered on behalf of the
petitioner.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States Dis-
trict Court for the District of Arizona, do hereby
certify that the above and foregoing is a true, per-

fect and complete copy of minute entry of December 9th, 1924, in the Matter of David A. Jacobson, Bankrupt, No. B-282 (Phoenix), as the same appears from the original records of the same remaining in my office.

WITNESS my hand and the seal of said Court affixed this 17th day of December, 1924.

[Seal]

C. R. McFALL,
Clerk.

By M. R. Malcolm,
Deputy Clerk. [71]

In the District Court of the United States, for the
Federal District of Arizona.

(B-282—PHOENIX.)

In the Matter of DAVID A. JACOBSON, Bankrupt.

In Re Petition of KATIE WERNER for Review.

NOTICE OF PETITION TO REVISE.

To Homer F. Allen, as Trustee in Bankruptcy, of the Estate of David A. Jacobson, Bankrupt, and to A. Henderson Stockton, His Attorney of Record:

Notice is hereby given to you and to each of you that Katie Werner, petitioner in the above matter will, forthwith, in due and proper time and form, and in accordance with law, rules and regulations existing, prosecute in the United States Circuit Court of Appeals, for the Ninth Circuit, "petition to

superintend and revise" those certain orders and decrees by the Honorable, the United States District Court, for the Federal District of Arizona, at Phoenix, made and entered in the above cause, on the ninth day of December, 1924, by which orders and decrees the petition for review was denied, *et cetera*.

Phoenix, Arizona, December 11, 1924.

(Signed) ZIMMERMAN & MULHERN.

ZIMMERMAN & MULHERN.

Attorneys for Katie Werner.

Received copy of the within notice this 11th day of December, A. D. 1924.

(Signed) HENDERSON STOCKTON,
Attorney of Record for Homer F. Allen, Trustee.

(Endorsed on back): Filed C. R. McFall, Clerk.
Dec. 11, 1924. United States District Court for
the District of Arizona. [72] By Chas. H.
Adams, Deputy Clerk.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect and complete copy of notice of petition to revise, in the Matter of David A. Jacobson, Bankrupt, as the same appears from the original records of the same remaining in my office.

Witness my hand and the seal of said Court affixed this 17th day of December, 1924.

[Seal]

C. R. McFALL,
Clerk.

By Chas. H. Adams,
Deputy Clerk. [73]

Regular October, 1924, Term, at Phoenix.

In the United States District Court in and for the
District of Arizona.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

(Minute Entry of Wednesday, December 17th,
1924.)

No. B-282 (PHOENIX.)

In the Matter of DAVID A. JACOBSON, Bank-
rupt.

MINUTES OF COURT—DECEMBER 17, 1924—
ORDER EXTENDING TIME TO AND IN-
CLUDING DECEMBER 24, 1924, TO COM-
PLETE RECORD FOR REVIEW.

In view of the fact that the petitioner, Katie Werner, is unable to complete the record for review within the ten days allowed, IT IS ORDERED BY THE COURT that the time of the said petitioner be and it is hereby extended to and including the 24th day of December, 1924, in which to complete said record for review.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect and complete copy of minute entry of December 17th, 1924, in case of David A. Jacobson, Bankrupt, No. B-282 (Phoenix), as the same appears from the original records of the same remaining in my office.

WITNESS my hand and the seal of said Court affixed this 18th day of December, 1924.

[Seal]

C. R. McFALL,
By M. R. Malcolm,
Deputy Clerk. [74]

[Endorsed]: No. 4443. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of David A. Jacobson, Bankrupt. Katie Werner, Petitioner, vs. Homer F. Allen, as Trustee of the Estate of David A. Jacobson, Bankrupt, Phoenix Savings Bank & Trust Company, a Corporation, and Northern Trust Company, a Corporation, Respondents. Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, an Order of the United States District

Court for the District of Arizona, and Transcript
of Record in Support Thereof.

Filed December 23, 1924.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.